

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

No. CR 13-00667 WHA

v.

CLEOPHAS KIRKSEY,

**ORDER GRANTING STAY**

Defendant.

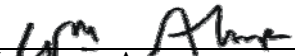
Defendant, a federal prisoner, has filed a motion to vacate, set aside, or correct sentence under 28 U.S.C. 2255 based on the Supreme Court's decision in *Johnson v. United States*, 576 U.S. \_\_\_, 135 S. Ct. 2551 (2015). The government moves to stay proceedings pending resolution by the Supreme Court of the applicability of *Johnson* to the residual clause of Section 4B1.2 of the United States Sentencing Guidelines. The Supreme Court has granted certiorari on this issue in *Beckles v. United States of America*, S. Ct. Case No. 15-8544. Defendant opposes a stay.

This order concludes that a stay pending a decision in *Beckles* is appropriate. Defendant has been in custody for approximately 38 months (since August 14, 2013), and his hypothetical revised guideline range would be 57 to 71 months. Even if defendant is re-sentenced at the low-end of the revised range, and even if defendant is eligible for good time credit, defendant would not be released before the end of the Supreme Court's term in June 2017. The Supreme Court's decision in *Beckles* will clarify whether defendant is entitled to relief. For these reasons, the government's motion for a stay is therefore **GRANTED**.

1 No later than 21 days after the Supreme Court issues a decision in *Beckles*, defendant  
2 shall file his reply to the government's opposition.

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4 **IT IS SO ORDERED.**

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6 Dated: October 3, 2016.

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8 WILLIAM ALSUP  
9 UNITED STATES DISTRICT JUDGE  
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